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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 116 (LAK)

5 JEREMY SPENCER,

6 Defendant.

7 -----x

8 May 11, 2022

9 4:05 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 U.S. District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: CHRISTINE I. MAGDO

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 BY: SYLVIE J. LEVINE

NEIL P. KELLY

20 ALSO PRESENT: BRANDON RACZ, Special Agent, FBI

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(Case called)

THE DEPUTY CLERK: Government, are you ready?

MS. MAGDO: Yes. Assistant U.S. Attorney Christine Magdo for the government. With me at counsel table is FBI Special Agent Brandon Racz. Good afternoon.

THE COURT: Good afternoon.

THE DEPUTY CLERK: Defendant, are you ready?

MS. LEVINE: Yes. Thank you. Good afternoon, your Honor. The Federal Defenders of New York by Sylvie Levine and Neil Kelly, on behalf of Mr. Jeremy Spence.

THE COURT: Ms. Levine, have you and your client had the report for the necessary period?

MS. LEVINE: Yes, sir.

THE COURT: Mr. Spence, have you read the presentence report?

THE DEFENDANT: Yes, your Honor.

THE COURT: And not meaning to be flip, have you read every word of it?

THE DEFENDANT: I have.

THE COURT: Have you discussed it fully with Ms. Levine?

THE DEFENDANT: Yes, I have.

THE COURT: The presentence report will be sealed and made available to counsel in the event of an appeal.

Now, I have noted one great big error in the

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1 presentence report in paragraph 6(a)(3) where it says the loss
2 amount was greater than \$150,000 but not greater than \$350,000.
3 Those figures are wrong. The loss amount is greater than
4 \$1,500,000 but not greater than \$3.5 million and I will make
5 that correction.

6 Are there any other unresolved objections to the
7 presentence report?

8 MS. MAGDO: Not from the government.

9 THE COURT: Ms. Levine?

10 MS. LEVINE: No, your Honor.

11 THE COURT: Thank you.

12 I adopt the presentence report and the guideline
13 computation and range that it contains.

14 Now, for the sake of good order I have received, in
15 relation to the sentencing: The presentence report; a proposed
16 consent order of restitution; a letter from Ms. Levine dated
17 May 9th; victim impact statements under a cover letter from the
18 U.S. Attorney's office from Craig Young, Maurice Martinez. I
19 have received a sentencing memorandum from the government that
20 was filed on May the 6th, to which there is a small pile of
21 attachments and an extensive sentencing memorandum from
22 Ms. Levine dated the 29th of April.

23 Is there anything else of which I ought to be aware?
24 Ms. Magdo?

25 MS. MAGDO: Not from the government. Thank you.

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1 THE COURT: Ms. Levine.

2 MS. LEVINE: No, your Honor.

3 THE COURT: All right. Now, I gather there are
4 victims of this crime who want to be heard on sentencing; am I
5 right?

6 MS. MAGDO: Yes, your Honor; there are two.

7 THE COURT: All right. And they are?

8 MS. MAGDO: They are Mr. Jeremy Lee and Mr. Daniel
9 Truque.

10 THE COURT: Is it Mr. Reed? Was that the first name?

11 MS. MAGDO: Lee, L-E-E.

12 THE COURT: Mr. Lee, you can come to the lectern here,
13 and as long as you are at the lectern you can take off your
14 mask, and I am happy to hear what have you to say.

15 MR. LEE: Thank you, your Honor. So I am just going
16 to read my statement:

17 I, like many other people, met Jeremy Spence online.
18 He had been placing trades and seemed to have potential in
19 terms of calling --

20 THE COURT: I am going to have to ask you to go a lot
21 slower because my old ears are no longer as quick as they used
22 to be.

23 MR. LEE: Sure.

24 I, like many other people, met Jeremy online. He had
25 been posting trades and he seemed to have potential as a

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1 trader. He was calling trades before they happened and he
2 became pretty famous, pretty quickly, online. I started to get
3 a following and I was excited about interacting with him. The
4 crypto markets were brand-new, not a lot of institutional
5 traders were in that environment and so it was really kind of
6 the wild west, so to find someone who could navigate that
7 environment with the complexity of it was exciting. I
8 initially wanted to learn from him and, you know, very
9 instantly I saw that he was an introverted guy and so I wanted
10 to help connect him with other people.

11 My background is in technology. I moved into fintech
12 just a few years ago, I moved up from Texas to New York and I
13 amassed a pretty large network of pretty influential people in
14 both the stock market and crypto world.

15 I made it a strong priority to help him. I went out
16 of my way, spent a lot of time to help him so that he would not
17 put himself in a bad situation. Crypto acted like it was not
18 going to apply to the real world in terms of SEC laws. I heard
19 from people that I was very connected with that that was not
20 true and every bit of advice that I gave him was to keep him as
21 protected as anyone in the crypto world.

22 So when I did meet him, I was surprised that he was
23 very young, very introverted, and he did not have a lot of
24 professional experience. So I went ahead and started to put
25 him in touch with those people, one of which is Dan who is

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1 here.

2 Sorry, I'm catching up here.

3 So once I started talk to him and met him in person,
4 he seemed quite excited about the opportunities in terms of the
5 network that I put him in touch with. We decided very early on
6 that what he was doing with these retail traders of which he
7 was keeping a mask on -- he would not tell us -- but what he
8 was doing was very large and he was taking in a lot of money.
9 And once we found out about that we told him that he could not
10 do that. And so, we went and set up a hedge fund for him.
11 It's not cheap, it's not easy. We did all of this for him. We
12 hired fund administrators. We did a lot of work. I went out
13 of my way to learn the laws just so he wouldn't get in trouble.

14 So time and time again I made it very clear that he
15 should not be taking money from people online and that he
16 needed to stop trading for anyone that was not a sophisticated
17 or accredited investor. Through every interaction he agreed
18 and told us it was his intention to move forward with doing
19 things the right way.

20 While waiting for this fund to be set up outside of
21 our normal jobs, I had given him a significant amount of money
22 to trade for me. I felt with my connections legally and
23 professionally, we hooked him up -- with this person was in a
24 fund, a premiere patent attorney who works for Morgan Lewis. I
25 mean, these are not small-time people. I felt with my

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1 connections legally and professionally that he understood the
2 seriousness of handling this money so I felt it was safe. I
3 did a background check on him and saw that he had nothing in
4 his background.

5 One of my best friends was as excited about crypto and
6 he wanted to set aside some money to invest. He did not have
7 anybody to trade for him and he did not have time to trade. He
8 knew that I had money with Jeremy and he wanted to give him
9 significant capital. I warned him of the risk and told him
10 that there are many hedge funds now starting form in the crypto
11 space and he should probably wait for that. He said that he
12 wanted to meet Jeremy so he flew up to New York and he met him.
13 And Jeremy assured him a hundred percent his money was safe.
14 This, according to the last I talked to the FBI, was after he
15 was already losing money. He posted fake returns of
16 significant amounts of capital and took \$800,000 from one of my
17 best friends. Come to find out, at least from what I
18 understand, he never invested any of Peter's money, he turned
19 around and started paying other people.

20 So at the end of the year, tax season comes around.
21 We gave him tax advice. Peter needed his money for taxes. I
22 went through four days of spending 12 hours on the phone with
23 this dude. And lie, lie, lie, lie, lie. I don't know if he
24 had the money. I don't know what he did with the money at that
25 point. I was on the phone all night with him, extremely

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1 stressful. At that point my buddy was in Europe. I had to
2 call him overnight and I had to tell him I don't think you're
3 going to get your money back. Not a fun call.

4 At that point I found out the FBI was looking into him
5 and he started to pull away from me and stopped talking. At
6 the same time, he got an attorney and before he fully pulled
7 away he kept telling me, oh, it's going to be fine. It's going
8 to be fine. Just lying, every word that came out of his mouth.

9 So at the end of it, the last time I spoke to him he
10 told me still, Peter's money was safe, it was in a different
11 fund. He also told me it was his express purpose to subvert
12 law enforcement and to subvert the court system by hiding
13 BitCoin and if he were to go to jail, that he is going to hide
14 money and that when he gets out, he is going to leave the
15 United States and he is going to live like a king with all that
16 money because BitCoin has gone up a ton. And when I talked to
17 the FBI, they said they don't think that's the case.

18 It is not that difficult to wash money in the crypto
19 space. I do not have any confidence -- no offense to the FBI
20 or anything -- but I did look at it, it is my expectation that
21 it was his express purpose to subvert the law and that is still
22 his purpose.

23 So it is very important for me to know that he could
24 not have had better humans around to help him. I spent a ton
25 of effort. I coached him on the importance of honesty,

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1 integrity, building things the right way, surrounding yourself
2 with good people. I introduced him to extreme professionals.
3 We set up a fund. We spent money to set up that fund.

4 So this was not an innocent mistake on his part. It
5 was willful. He had every opportunity to do the right thing
6 and he not only made mistakes but willfully stole a million
7 dollars from one of the nicest people I have ever met. His
8 actions have significantly damaged close relationships in my
9 life, it has damaged my professional reputation, it has damaged
10 my savings, and if he was at all responsible with my funds, I
11 would have a lot more money right now if he had just held it,
12 if he just didn't lie about it.

13 So most importantly, he took advantage of people that
14 reached out to try and help him on their own time that are good
15 people. So based on Jeremy's willful, consistent lies, and
16 pattern of fraud, I would expect that the Court take very
17 seriously what he has done and that this is not just some young
18 kid who didn't know what he was doing. He had hundreds of
19 opportunities to do the right thing. He lied at every step of
20 the way and he never once chose to do the right thing.

21 So I would appreciate it if this is factored into
22 sentencing and I thank you for your time.

23 THE COURT: Thank you.

24 The next victim witness is?

25 MS. MAGDO: Mr. Daniel Truque.

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1 THE COURT: Please come up, sir. You may proceed.

2 MR. TRUQUE: Thank you.

3 Just to give you some background, I have been in
4 finance for over 15 years now. I started my career at McKenzie
5 working for the risk management practice during the financial
6 crisis so helping financial institutions gracefully implode or
7 evolve from hairy situations. So I have had a long background
8 in terms of regulation and how to do things properly in the
9 financial arena. I did work for HSBC Bank, this was during the
10 time after 2008 where you had all the additional compliance
11 relations, etc., and that ginormous burden that the banks had
12 to deal with to avoid another implosion. I have taken multiple
13 Financial Series licensing exams.

14 So what I am trying to tell you is that I know the
15 regulations, I know how these things work. On top of that, I
16 worked at both Bridgewater and AQR Capital. Bridgewater and
17 AQR are the two largest quantitative hedge funds in the world,
18 they both manage close to a trillion dollars each. I have
19 experience on how to do this.

20 When Jeremy came to me -- and just to distinguish
21 here, when I mention "Jeremy" I am talking about Jeremy Lee.
22 Jeremy Spence I'm going to refer to as Little Jeremy, that's
23 what we refer to just him to differentiate, so that way there
24 is no confusion there.

25 I met Little Jeremy in early 2018, like many of his

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1 victims, through word of mouth; in this case through my friend
2 Jeremy. His alleged returns were impressive. I had already
3 fallen for the crypto fever like many others. Questions that
4 many of you may ask is why trust a kid in college still trading
5 the crypto markets? The crypto markets are heavily
6 inefficient. They are new markets, they are driven a lot by
7 sentiment and by community, and if you have somebody like
8 Little Jeremy that can spend -- glued to their monitor 24 hours
9 a day to understand what people are talking about, it was very
10 feasible that somebody in his position and with the connections
11 that he had, call it in the cryptosphere, he could actually be
12 able to foresee or predict the movements in the markets. So it
13 is not that we just jumped blindly into something. As my
14 friend Jeremy mentioned, he had seen how Little Jeremy's
15 reputation online was growing and how he was accurately
16 predicting different market moves ahead of time.

17 So after meeting with him and explaining to him my
18 background, I told him two very clear things: The way you are
19 managing funds in your personal account is illegal; and number
20 two, I can help you become a successful fund manager which is
21 what you are aiming to be. He loved the idea, he seemed eager
22 to create a new fund. And, alongside Jeremy, we went ahead,
23 hired lawyers, and created the golden standard of hedge fund
24 structures which is a Cayman Islands based master fund with a
25 Cayman Islander Feeder Fund and a Delaware Feeder Fund. These

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1 are the golden standard of hedge funds. Traditional hedge
2 funds use this and so we are separating the interest of onshore
3 investors and offshore investors in terms of sophistication.
4 There is cheaper ways of building a fund but this is the way to
5 do it if, in the future, you want to attract institutional
6 capital and sophisticated investors. We took care of
7 researching not only the legal but also, as my friend Jeremy
8 mentioned earlier, looking at different fund admin
9 relationships, the auditors, the banking requirements, etc. We
10 had all of that in mind.

11 While the necessary entities on paperwork were created
12 and to avoid missing out on the returns, I gave him some money
13 to manage for me. I told him I would not pay for performance
14 because that was flat out illegal. Also, even though there was
15 not a formal contract or guarantee between him and I, I
16 calculated that he would not bite the hand that would make him
17 into a bigtime hedge fund manager. I saw a lot of potential in
18 him -- and I was wrong.

19 Less than a year later, he never returned the more
20 than 20 BitCoins I gave him, which are worth today close to
21 \$1 million. And that is despite BitCoin Prices having dropped
22 recently over 50 percent so let's keep that clear. The money
23 that I gave him would have been worth way over a million
24 dollars today.

25 At some point the assets, the digital assets that he

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1 was managing, were worth well over \$10 million. I understand
2 the Court only looked at the dollar value but, let's be clear,
3 the digital asset space is more than established by now, these
4 assets have a value, and at some point he was managing over
5 \$10 million that suddenly, somehow, disappeared.

6 Again, I am here with Jeremy my friend in the idea
7 that I don't think that money disappeared. That money is
8 somewhere and Little Jeremy had mentioned very clearly that if
9 he ever got into trouble, he would simply hide the money.
10 Whether that is realistic or not in today's day and age where
11 all the wallets can be traced fairly closely and we have seen
12 examples of past hacks where the money comes up, that was his
13 intention. And I don't know whether the -- how much reach the
14 FBI has into researching this but, again, that was his
15 intentions and I believe that there is probably, very likely,
16 still some crypto currency stashed away for him to get it out
17 and enjoy it in the future and have his great payday while the
18 more than a hundred victims are still here lamenting what
19 happened back then.

20 There was a guy on the west coast in California, he
21 actually gave him money that -- it was a bad idea, but money
22 that he was supposed to use to pay for his college loans.
23 There was another guy in Florida that was the one actually
24 setting up the box that he created on this online chat
25 application where they could show automated reports -- all of

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1 these reports were fed by data that he gave. So a lot of
2 people helped him set up stuff and he was just using everybody
3 and fabricating reports.

4 I had been very clear with him from the start and
5 throughout the few months that I interacted with him telling
6 him many times what you are doing is illegal. He insisted on
7 continuing to trade while we finished setting up the fund. I
8 told him there were legal ways to do this but, most
9 importantly, he could not charge a management fee in the
10 meantime. Later I find out that he renamed that performance
11 fee "a tip" in this online chat application where he would do
12 the reports. I told him that a tip, if mandatory, is still
13 illegal. It is not allowed. He ignored it. I went as far as
14 to clarify in these words: A mandatory tip is still a
15 performance fee and it is illegal. You cannot do this.

16 Then came the spring tax season. I warned him, you
17 have to pay taxes on the trades that you have been doing
18 because all of these digital assets you have been trading on
19 your personal accounts. The IRS doesn't care that it is not
20 your money. The IRS only cares that your accounts are trading
21 crypto assets that should pay taxes. Set money aside to pay
22 those taxes and when you return money and gains to your
23 investors, you need to deduct those taxes. He never did. And
24 I'm sure there is many other taxes that he didn't pay on top of
25 that.

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1 I highlighted the importance of having a formal hedge
2 fund structure out of the Cayman Islands and the Delaware
3 Feeder so that investors would be trustworthy of the golden
4 standard of hedge funds. Again, he always said yes, yes, we
5 are going to do this. I asked him several times to look at the
6 list of his investors, figure out who were credit debts so they
7 could be given subscription agreements for the new fund and
8 then weed out and kick out any of the non-accredited investors
9 who would not be eligible to invest in this type of fund.
10 Again, the whole time he was thankful for the advice, always
11 complimentary, and gave me lip service that didn't materialize
12 into action.

13 Then came the summer. This is when things started
14 getting bad. It was kind of, like, a weird time in my life, I
15 actually got married in July of that year, 2018. I even
16 invited Little Jeremy to my wedding celebration. In the end,
17 he showed up late and apparently wasn't even wearing dress
18 shoes and didn't get in. Or, maybe that is just the excuse
19 that he gave me and he never showed up to the venue. But this
20 is just to show how tight we were supposed to be back then and
21 how badly he was misleading everybody who was trying to help
22 him.

23 In the fall, my wife left for her NYU study abroad
24 semester in Ghana. Meanwhile, I couldn't travel. I couldn't
25 work because I was still processing the marriage-based Green

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1 Card and my previous employment work visa had expired. So I
2 was in a situation where I couldn't travel, I couldn't work,
3 and I had no money. A lot of the money, I had given it to
4 Jeremy. I was hoping to build a nest for me and my wife and,
5 instead, he disappeared everything. What would have been
6 something that would have given my wife and my future family
7 security essentially disappeared thanks to his complete
8 disregard for other people.

9 It was a dark period for me. I entered a period of
10 depression and anxiety. I started to realize that Little
11 Jeremy was likely not going to return my money. The nest I
12 built for my wife and me was gone. Worst of all, I was ashamed
13 of sharing this to my wife -- with my wife. She depended on me
14 for support while she was still pursuing her studies.
15 Naturally, I became with conserving cash, going as far as
16 checking out the nut section at Duane Reade when they would be
17 because they were a dense source of nutrition. I literally had
18 no cash to, like, even pay rent. At some point I tried selling
19 a couple of BitCoins that I had left to pay rent and, lo and
20 behold, I got scammed online thanks to Chase Bank reversing a
21 Zelle transaction which is supposed to be absolute but that's a
22 story for another day.

23 Everything in my life seemed to be spiraling out of
24 control and Little Jeremy, of course, stopped communicating
25 with us -- most likely ashamed and most likely given advice

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1 from his lawyers in terms of communicating with people in his
2 "quote unquote" fund.

3 Make no mistake, Little Jeremy has nothing of little.
4 He is young, sure; 20-something. But he is not done and
5 certainly not naive. He is a master manipulator and cannot
6 claim ignorance. He got plenty of good advice from experienced
7 people. My advice alone would have prevented his current fate.
8 He knew what he was doing, he willfully did what he did. He
9 even once said that if he got in trouble, he would stash away
10 crypto currency. I mentioned this before, I mention it again
11 because it is something that is a key point of contempt for
12 Jeremy and I, knowing that he likely will have that nest
13 stashed away somewhere in the future.

14 In the end, I have actually coached other managers
15 just like Little Jeremy was the first one, I have coached other
16 managers. I am actually launching an FX trading fund by the
17 end of the month. This is a fund that is already looking very
18 promising, we already raised \$5 million from investors, credit
19 investors with all the relevant bells and whistles required by
20 law and regulation. There is three other managers in the
21 pipeline for the rest of the year.

22 Jeremy Spence -- Little Jeremy sitting right there --
23 he could have been one of them and he chose not to. He chose
24 to go the wrong way, he chose to go the illegal way. He chose
25 to ignore all the good advice that people with experience in

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1 the industry gave to him.

2 And one last thing before I go. The fact -- I just
3 heard Jeremy mentioning -- my friend Jeremy -- mention that the
4 money his Peter, his other friend gave to Little Jeremy
5 apparently was paid out to other investors that were cashing
6 out. I don't need to have been in finance for 15 years to know
7 that when you pay out your investors with money from other
8 investors, it is what is usually described as a Ponzi scheme.
9 So let's keep that clear. If he actually did that and he was
10 actually not making returns, then this is even worse than it
11 sounds.

12 That's all I have. Thank you very much.

13 THE COURT: Thank you.

14 Ms. Levine.

15 MS. LEVINE: Thank you, your Honor.

16 Jeremy was 21 and then 22 years old when he committed
17 this crime. He was an introverted college dropout who became
18 enthralled with the burgeoning world of cryptocurrency, and in
19 less than a year he got in way too fast and way too deep and he
20 made loads of mistakes and he lied. He committed a federal
21 crime and the whole thing crumbled around him, and that
22 crumbling took place at the end of 2018 which is now three and
23 a half years ago. And over the course of the last three and a
24 half years, Jeremy has lived every single day with the
25 consequences of his misdeeds.

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1 His downfall was blasted across the crypto world. He
2 was sued by the investors. There are civil judgments from this
3 building that have been entered against him. He was sued by
4 the CFTC. And, on a personal level, he left New York, he moved
5 back in with his parents, he is completely reliant on them, and
6 he is broke. He is at home. He sometimes mows lawns for money
7 or does small graphic design jobs. His days in the online
8 financial markets are completely behind him. Jeremy already
9 lives with the total and utter failure of his venture into the
10 cryptocurrency world every single day. And for his crime, he
11 pled guilty to his first ever conviction, a federal felony, and
12 I think that's where I have to start responding to something
13 the victims just said which is the suggestion that he never
14 once did the right thing.

15 Your Honor, pleading guilty was the right thing.
16 Pleading guilty was an important and necessary step towards
17 making amends for the crime that he did in fact commit. And he
18 has apologized for his actions. He did so in his letter to
19 your Honor. And in that letter he specifically apologizes to
20 the investors who had trusted him.

21 Now, this entire thing was ill-conceived from the
22 beginning. Jeremy never should have been trading with so
23 little expertise no matter how ambitious he was, or nerdy he
24 was, or excited he was about crypto. He told your Honor in his
25 letter it was poor decision-making to be in that world to begin

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1 with, he was out of his depth. And so, the question we are all
2 here to talk about today and the question that your Honor has
3 to decide is all these years later is does he need more
4 punishment and, if so, how much punishment is enough.

5 Now, Jeremy has never been to prison for a day in his
6 life. He has never been on probation. He has never been on
7 home detention. He has never been mandated to do community
8 service. And we submit that there are many ways that this
9 Court can punish and specifically deter Jeremy without
10 requiring that he go to jail. And a guideline sentence, which
11 is essentially five years, when Jeremy has never been to jail
12 for so much as five hours, is vastly greater than necessary.
13 It would be inconsistent with the 3553(a) factors and it would
14 be inconsistent with the interests of justice.

15 Now, your Honor knows from our materials that this
16 case marks Jeremy's first ever contact with the criminal
17 justice system. Ever. He has zero criminal history points.
18 And the statistics from the United States Sentencing Commission
19 tell us that people with zero points -- people like Jeremy --
20 have the actual lowest rate of recidivism of anyone who comes
21 with this system, even though lower than people with just one
22 point even though they're in the same category. And I think
23 the reason for this is that people who live law-abiding lives
24 and then step off track for the first time don't need that much
25 work to get back on track.

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1 This whole experience from his arrest through today is
2 designed to send a specific message to Jeremy, and others: Do
3 not ever do anything like this again. And there is simply no
4 question that Jeremy has heard that loud and clear. And again
5 I say, there are lots of ways your Honor can drive that point
6 home -- put him on an ankle bracelet, lock him in his house,
7 mandate community service, have him pay the community back for
8 the wrongs that he has done, and of course by requiring
9 restitution which Mr. Spence has agreed to, he signed a
10 prospective restitution order, and that way he can work to pay
11 off his victims. Jail is not necessary here and the numbers
12 requested by the government are just vastly inappropriate and
13 unjust.

14 Now, your Honor is well familiar and read in our
15 letter and has read in other letters over the years the
16 critique of the guideline section that applies here, 2B1.1, and
17 I won't belabor it but beyond to say this: The Second Circuit,
18 and many District Courts, have criticized the structure of this
19 guideline because the way that 2B1.1 is written, the Sentencing
20 Commission decided to make the base offense level low. It
21 starts at six, and then it rises at a prodigious rate based
22 solely on loss amount and at intervals that are larger than we
23 see for weapons cases or for bodily injury cases, and in ways
24 that the Second Circuit has specifically said are not
25 empirically based. And here it is that loss amount enhancement

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1 that changes Jeremy's guidelines from 6 to 12 months to 57 to
2 71 months. It is a perfect example of how this unjust
3 guideline falls on folks. And so we ask your Honor to consider
4 these arguments and not use this overblown guidelines range as
5 a starting off point in this case.

6 Now I want to talk for a minute about both specific
7 and general deterrence. The government, in their letter, said
8 that Jeremy's public shaming -- which of course they don't
9 dispute -- you can't Google his name without reading all about
10 this -- this public shaming accomplishes I think both specific
11 and general deterrence. It is specific because it has, as I
12 described at the beginning, long before any Court systems got
13 involved, the crypto market -- this online world -- found out
14 what happened, they publicized what happened. And as a
15 practical matter, no one is ever giving Jeremy any money ever
16 again to do anything with. He is out of the financial business
17 for good. This whole thing has been life-changing for this
18 25-year-old.

19 And I think it is worth noting that in recommending a
20 downward variance, the Probation Department specifically said
21 we do not think specific jail time is necessary for specific
22 deterrence. We believe that he has been specifically deterred
23 already.

24 And so that leaves us, of course, with general
25 deterrence. And this is kind of an interesting case because in

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1 a lot of cases, I think general deterrence is kind of -- is
2 more theoretical than it is actual because we don't know
3 exactly who is learning about the outcome of any particular
4 case. But in this case, because it all happened online,
5 because it was all taking place in an online forum, his
6 downfall was documented in great detail on online fora. In our
7 papers I cited to many, many, many websites that tell the story
8 of Jeremy's crime and its consequences. It was true when the
9 fund collapsed, it was true when he was sued, it was true when
10 got arrested. There has already been a bright shining warning
11 to that community that you shall not and should not engage in
12 the same mistakes that Jeremy did.

13 Now I want to talk a little bit about the context in
14 which this offense was committed and I am going to agree with
15 something that Mr. Lee said which is the crypto world,
16 particularly back in 2017 and 2018 when Jeremy was trading, I
17 had written in my notes the wild west, which is exactly what
18 Mr. Lee said. It is nothing like the traditional financial
19 markets.

20 Traditional financial markets have gatekeepers.
21 Right? You usually need credentials for people to invest lots
22 and lots of money with you but here, no such thing existed.
23 Investments were made from one anonymous online screen name to
24 another anonymous online screen name in a world of chat boxes
25 and expletives and no capitalization. People were extremely

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1 eager to break into this world. I think one of the victims
2 just called it "crypto fever." And people -- smart people,
3 sophisticated people -- were desperate to break into these
4 online markets. And they sent Jeremy money and many of the
5 investors didn't even know him as Jeremy, they knew him as a
6 cartoon avatar of an igloo. And I will share with your Honor
7 that I called it an igloo in my papers. Jeremy corrected me
8 that it is a picture of a whale. But that's the point, it was
9 a hard-to-see cartoon that they were investing their savings
10 with.

11 THE COURT: Is it still possible for somebody to do
12 that now?

13 MS. LEVINE: That's a good -- so I -- it is probably a
14 better question for the FBI but, as I understand it, there has
15 been more regulation brought into these markets than there was
16 then. I think you can invest money via the Internet, like I
17 think people are able to, but I do think that regulation has
18 advanced in the forum. At the time Jeremy was doing it there
19 was none, as I understand it.

20 THE COURT: That doesn't help answer my question.

21 MS. LEVINE: I guess I don't really know the answer to
22 your question.

23 THE COURT: So there is no way I can have total
24 confidence that six months or a year from now this defendant
25 doesn't invent a new avatar and stick it on the web and start

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1 doing this all over again. Right?

2 MS. LEVINE: So I guess -- I guess not -- no, there
3 would be nothing stopping him. However, I guess there are
4 things that would stop him, here is what they are. The first
5 is I think that Jeremy is an entirely different place in his
6 life than he was in 2017, not least of all now having been
7 prosecuted fully and admitted to a federal felony. Right?
8 This whole process is supposed to teach people lessons and we
9 have no reason to think he hasn't learned his lesson loud and
10 clear.

11 Second, you have the last 15 months of Jeremy -- the
12 last 15 months of full compliance with pretrial release and
13 with the FBI knowing a whole lot about Jeremy, they know a lot
14 about his finances. They are well-acquainted with him and
15 there has been absolutely no hint that he has so much as logged
16 onto any of these online fora and done anything there.

17 And then, of course, the future is different than the
18 past because when Jeremy is placed on supervision, which he
19 will be in any sentence your Honor gives, your Honor can
20 mandate that the probation office be given access to his online
21 devices. The Probation Department here can literally monitor
22 that behavior to prevent it from happening. Your Honor can
23 also add additional --

24 THE COURT: If they know the universe of devices, yes?

25 MS. LEVINE: That's correct. But there is absolutely

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1 nothing in Jeremy's history, to date, of hiding -- once this
2 case started there have just been no incidents. Your Honor and
3 I both see lots of cases where during pretrial supervision we
4 see people re-offend, we see people relapse, we see people hide
5 things, we see people have secret devices. There has been no
6 such allegation in this case and I submit to you it is because
7 he is broke and living under the roof of his parents. This is
8 not someone who is out in the world in the same position as he
9 was before. So I think there is absolutely no indication of
10 relapse, there is no indication of repeated behavior. And your
11 Honor has three and a half years to look back at. The FBI was
12 very, very, very involved in Jeremy's devices, account numbers,
13 account names. They know everything about him and in three and
14 a half years, there is no suggestion that he has done such a
15 thing.

16 THE COURT: They know everything about him except what
17 they don't know.

18 MS. LEVINE: Well, I suppose that's true but they've
19 done a lot of legwork and this is not a person who was
20 particularly sophisticated, he is not a person who -- I mean, I
21 think we all agree -- the victims, FBI, and I -- all agree that
22 this was a young kid who got in too fast. He doesn't have the
23 kind of sophisticated Cayman Islands hedge fund connections
24 that even the victims have. He just didn't have such things.
25 And I know the victims say they tried to give him those things

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1 and that it was pretty much an utter failure because he was
2 sitting alone behind his laptop clicking buttons. He just
3 didn't have the wherewithal for such additional bad acts.

4 And so, it is really hard when you read the discovery
5 in this case. It is almost hard to believe, even though I know
6 fully what he is charged with -- and I don't know anything
7 about cryptocurrency -- but you read the discovery in this case
8 and it is almost hard to believe that, like, one chat avatar
9 that is a picture of a rodent who is using, like expletives and
10 lower case letters to another avatar that's a picture of a
11 whale, and they have names like Bruce Halftroll, and Jeremy is
12 posting things like "invest in this squiggly line," and "just
13 kidding, I suck," that in that world it's almost hard to
14 believe that that's a real financial market. And of course it
15 was, I'm not disputing that it was, but I really do believe
16 that a kid -- a 21-year-old college dropout who got kind of
17 wrapped up in this in the way that social media wraps people
18 up, it would have been really, really hard to appreciate how
19 unregulated, how in such an unregulated, anonymous world how
20 the -- like how those consequences would translate to real
21 life. And of course Jeremy didn't think those things through
22 and that's why he is here but he absolutely has now.

23 There is no better way to teach somebody that this was
24 not an online anonymous back and forth chat world than by
25 having the FBI come to your house, by having a civil judgment

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1 entered against you, by being on pretrial release for 15
2 months, and by pleading guilty in open court to a federal
3 felony. That is how we intervene. It is how we teach Jeremy
4 that he was wrong before. To suggest that none of those things
5 have value or taught him anything or would stop him, I think,
6 undervalues what we all do here every day.

7 And just to make one additional point about how
8 unregulated and out-of-control these markets were, the place
9 where most of the investor money was traded was on a platform
10 that's called BitMEX. In the last few months the U.S.
11 Attorney's office here in the Southern District of New York
12 arrested the founders of BitMEX because the platform itself, it
13 turned out, was illegal. The way they structured it was in
14 violation of federal laws. And now those people have pled
15 guilty and they're pending sentencing I think in front of Judge
16 Koeltl.

17 So I say all of this to say back in 2017 and 2018 this
18 new market, things were swirling around and people made a lot
19 of mistakes but the government has stepped in, they've shut a
20 lot of them down to your Honor's question, I guess, about doing
21 it again. They have been, I think, trying very hard to bring
22 regulation into these places. And so at least that platform,
23 for example, is gone.

24 And to that end, despite how unreal it felt, despite
25 how unregulated it was, Jeremy knows and completely accepts

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1 that real people lost real money. There has never been any
2 question about that. He has never disputed the restitution
3 amount, he entered willingly into the restitution order, and
4 this is also, I think, distinct from a lot of the fraud cases
5 your Honor sees in this building in that the FBI -- the
6 government's narrative is not that Jeremy had a lavish
7 lifestyle or stole the money and kept it or lined his pockets
8 or used it for something in particular.

9 I heard both the victims today speculate that they
10 think it is in some magical fund somewhere. It is not at every
11 sentencing where I find myself in alignment with the FBI but
12 the FBI has dug really deep and very thoroughly and I think
13 they feel strongly -- I have spent a lot of time on the phone
14 with the agent and the prosecutor -- that the money doesn't
15 exist, it was lost in the markets, it was re-invested in the
16 kind of chaos of the downfall of the fund and some of it was,
17 as one of the victims just mentioned, some of it was -- some of
18 the money that came in was used to pay off other investors.
19 That's part of the fraud here. But Jeremy doesn't have it. He
20 is living alone in his parents' house, broke.

21 It is rare in a case I think that I would spend this
22 much time talking about the victim statements both here in
23 court and the ones that were submitted and we absolutely accept
24 that the hardships incurred were real, but I do want to talk
25 about some of the facts that I think it's part of my job to

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1 talk about some of the facts in those letters that are salient
2 to sentencing. And the first is this:

3 Jeremy did misrepresent his trading successes. But he
4 really did not ever misrepresent who he was. He was a
5 21-year-old college dropout with no financial training. He
6 didn't pretend to have gone to business school, he didn't claim
7 he was 35 years old. He was a guy who was good at crypto
8 trading on the Internet. And the investors knew exactly who
9 they were dealing with. Mr. Lee said to your Honor the same
10 thing he wrote in his letter: "When I met him, I was surprised
11 to meet a very young, introverted trader, without a lot of
12 professional experience." That's a completely accurate
13 assessment. They knew who he was.

14 Second, many of the investors were older than Jeremy
15 by at least a decade and they were far more sophisticated.
16 They were the ones with financial training and experience and
17 McKenzie on their résumés. Jeremy was a philosophy major who
18 got through six semesters at knew, NYU. And I think that that
19 matters because there is this duality in the letters where on
20 the one hand you have people like Mr. Truque saying we saw what
21 he was doing, it was illegal, we told him it was illegal, we
22 warned him it was illegal, but they were also giving him money
23 to invest. And in Mr. Truque's letter he said, "It was with no
24 formal contract or guarantee between him and I." I think that
25 many of the victims, exactly like Jeremy, were just hoping this

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1 was all going to work out. They were excited about
2 cryptocurrency and everybody made a lot of mistakes. That
3 world was too optimistic and too informal and too presumptuous
4 but it wasn't exclusive to Jeremy.

5 THE COURT: And one person, from what I understand
6 here, was lying about it.

7 MS. LEVINE: That's right. But I think that the lies
8 in this case -- and he did do that. I have said so and your
9 Honor is absolutely correct, but the lies were in the same vein
10 of trying to make people money in this market. It wasn't so he
11 could take tropical vacations. He was making investments,
12 there is no question about it. The FBI agrees with that. He
13 was doing it badly and then incentivizing people to give him
14 more money based on false information and that's the crime.
15 That's the crime. But it was to -- it was because he believed
16 the hype, it is because everybody -- everybody -- thought
17 crypto is going up, everyone is going to make money if we do
18 this. And it was stupid and it was extremely naive. And in
19 Jeremy's case, because of the misrepresentations, it was
20 criminal but it was not -- it certainly didn't start as
21 malicious, it started from trying to make real people real
22 money.

23 THE COURT: But it certainly, at some point, got to be
24 quite malicious, didn't it?

25 MS. LEVINE: So I think that's right but I still think

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1 the outcome was quite malicious. I still think at no point did
2 Jeremy think, man, I'm going to hurt these people. To the
3 contrary. He thought, I'm overwhelmed, I'm filled with
4 anxiety, I have no idea how to get out of this, and I am going
5 to freak out and say whatever is the easiest thing to make
6 people not be mad at me until tomorrow. And that's not really
7 malice. It's thoughtless and it is stupid but it is not malice
8 and I do believe there is an important line there that
9 distinguishes Jeremy from a lot of other fraud cases that your
10 Honor sees.

11 And there is just this whole world was just so risky.
12 I heard the victims talk about the risks inherent in the crypto
13 markets and I think we can't appreciate, I think unless maybe
14 we were there doing it, the fever level of the crypto fever
15 that had seized everyone. You know, these markets were
16 being -- like some of these online chat rooms, they're going 24
17 hours a day, people from all over the globe are chatting and
18 posting and chatting and posting and I think it was a lot of
19 wishful thinking and I think that a lot of people got carried
20 away and Jeremy not only did those things, it was wishful
21 thinking and carried away but also crossed the line. He
22 crossed the line by posting false information and for that he
23 is now a felon for the rest of his life.

24 But I will tell you that in reading all of the
25 discovery in this case, all I kept thinking about was this

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1 adage like it is just too good to be true. Right? Everybody
2 from the investors to the BitMEX trading people to Jeremy, had
3 this kind of wishful thinking that even in the victim impact
4 statements your Honor read there is kind of two themes, there
5 is the victim saying here is the money I lost and here is the
6 hypothetical possible amount of money I might have had if they
7 had stayed in the market. Right? Even today there is this
8 idea that crypto is going to solve everyone's financial
9 problems and I think that's just not accurate.

10 Then, of course, the last thing I will say about the
11 victim impact letters, I think it is absolutely incumbent upon
12 me to point particularly to Exhibit 13, which is one of the
13 letters provided by the government in which that victim said,
14 very clearly, that he does not think that Jeremy should go to
15 prison. He said -- and I will quote here, "I know that people
16 make mistakes and sometimes cannot assess the implications of
17 any actions in advance. The accused is, if I remember
18 correctly, several years younger than me, just 22 years old at
19 the time of the crime, and I would be ashamed if I did not
20 believe in a second chance for the person concerned. I don't
21 want a stranger to me on the other side of the globe to spend a
22 big part of his life in prison." And that, of course, brings
23 me to one of the mitigating factors I discussed in my letter
24 which is Jeremy's age. And I'm not suggesting that he wasn't
25 capable or competent of committing this crime. He did do so as

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1 a fully-fledged legal adult and he has taken responsibility for
2 that by pleading guilty, but as I wrote in my letter, we do
3 know that adolescence, in terms of brain maturation, continues
4 until the age of 25; that at the time Mr. Spence committed this
5 crime at 21 years old there is a different -- the part of your
6 brain, the prefrontal cortex that has the long-term judgment
7 that can see long-term consequences is not fully developed.
8 And I think that places him today, based on the lapse in time,
9 in a different place not only in his life, in his family life,
10 in his personal life, but in his neurological life. I think he
11 is at a different phase as he stands here today.

12 And, you know --

13 THE COURT: Would you say the same thing about someone
14 of the same age who walked into a bodega, put a gun to the head
15 of the cashier, and blew his brains out?

16 MS. LEVINE: I think if they were below the age of 25
17 I would say that that person's immaturity, their brain
18 immaturity contributed to their decision. That's not to say
19 they shouldn't also be held accountable for their crime but are
20 they the same as a clear-thinking adult? No.

21 And I think actually you see that because we don't
22 see -- I don't see a lot of cases where my client is the
23 youngest and kind of least sophisticated of the world that's
24 around them. Right? We are often dealing with the person that
25 is the most culpable, the person that should have known the

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1 most better, and in this case that's really flipped on its
2 head. And I think that we believe that people should mature
3 with age. Big picture, I think the statistics of the
4 Sentencing Commission bear that out and in particular in this
5 case we know that some of his conduct just wreaks of how young
6 he was and how silly he was and how naive he was.

7 But, having said that, I think Jeremy has some good
8 qualities. I think he had some good qualities then and now
9 and, frankly, he should have known better. Just because he is
10 naive or gotten in over his head is not an excuse for
11 exercising poor judgment, it is just a piece of the puzzle.

12 I think that as your Honor sits here and evaluates the
13 3553(a) factors together, one thing the Court can think about
14 is Jeremy's potential for the future. He is a smart kid, there
15 is no question that he has intellect. I think that is
16 well-documented. He has just a handful of semesters between
17 him and a bachelors degree. He is eager to go back to college,
18 he wants to study science. He wants to have nothing do with
19 finances or economics, really, ever again. He wants to work.
20 He is a person who knows how to work. He was a busboy starting
21 at age 14. He appreciates the value of a dollar and he is
22 going to go back to work, he is going to work I think for most
23 of his adult life to pay off the victims in this case.

24 Now, the government suggested in their letter that
25 because we pointed out the fact that Jeremy is middle class

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1 that we are asking for some kind of middle class sentence and
2 that is, of course, not the case. We are doing what 3553(a)
3 demands which is to say that Jeremy is lucky to have some
4 structures and some support in place that will help him going
5 forward.

6 He has a safe place to live. He has people who love
7 him. He has skills that will make him employable in the
8 future. He has a college degree that will make him further
9 employable in the future. These are the kinds of things that
10 can give the Court confidence that he can get back on track.

11 And there is no factor I think more relevant to that
12 analysis than his parents. His parents are sitting in the
13 front row next to his twin sister. They came here with him
14 today. They all drove together from Rhode Island. And in the
15 letters they wrote to you and that their extended family wrote
16 to you there is simply no question that they love him, that
17 they've watched him throughout this prosecution and the civil
18 cases that came before it. They have seen how stressed and
19 embarrassed and ashamed he is and I think that their hearts
20 break for this ambitious kid who really, really, really screwed
21 up. And despite appreciating and knowing and fully
22 understanding how badly he screwed up -- which he did --
23 they're absolutely certain that he is going to get back on
24 track, that he can do that, and he will literally do so under
25 their watchful eyes. He lives in their house, they are

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1 financially supporting him.

2 And then last, the last mitigating factor that I have
3 to talk about, of course, is Jeremy's current medical crisis
4 and perhaps I should have started with this rather than ended
5 with it because I will tell you that of all the things I'm
6 talking about today, this is the one that Jeremy and his family
7 are the absolute most concerned about and that is his need to
8 get treatment for his recent cancer diagnosis. That's the
9 absolute most important thing on his mind and the mind of his
10 family.

11 Your Honor already knows that in March Jeremy had
12 tests followed by emergency surgery to remove what turned out
13 to be testicular cancer. They found a germ cell tumor. They
14 tested it. It was malignant. And a cancer diagnosis is a lot
15 for anyone, but it is particularly so for an otherwise healthy
16 25-year-old.

17 He is lucky to be receiving very good medical care and
18 cancer like this, as I understand it, has a good prognosis if
19 you get the right treatment and if you stay vigilant and that's
20 what he has been doing. He has been having regular scans, he
21 has been going back to the oncologist, he has been going back
22 to the surgeon, he has been going back to the urologist because
23 that's how you monitor if the cancer has spread or if it comes
24 back. And I wrote to your Honor earlier this week that just
25 this last Friday, based on a review of the most recent CT

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1 scans, the oncologist said that Jeremy needs chemotherapy and
2 that round of chemo therapy is scheduled to begin on May 23rd,
3 which is in, of course, about 12 days.

4 THE COURT: What is the duration of the planned
5 course?

6 MS. LEVINE: Yes, your Honor. It is scheduled for
7 what they call a 21-day cycle.

8 As I understand it from reading his medical records,
9 because of the side effects of chemo and monitoring his
10 progress, they would want at least two months following that to
11 see if it worked. And so, in the event the Court is
12 contemplating a jail sentence, we would ask for a surrender
13 date of no earlier than September 1.

14 THE COURT: Is there any detectable evidence of spread
15 outside the portion of his anatomy that was removed?

16 MS. LEVINE: So as I understand it there was some kind
17 of notation on the most recent scan that was part of the
18 recommendation to now do chemo. We weren't sure that he was
19 going to need chemo and that was a more recent decision based
20 on a more recent scan.

21 Now, look. I think his prognosis overall is good.

22 THE COURT: That I understand but my question was a
23 very specific one.

24 MS. LEVINE: I'm sorry.

25 THE COURT: It was: Are you in a position to tell me

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1 today whether there is any evidence of any spread outside the
2 portion of his anatomy that was removed surgically?

3 MS. LEVINE: So I will read from the medical record
4 that was faxed to me on Friday that said -- this is a quote --
5 note made of CT scan results which showed presence of small
6 pulmonary nodules. Cannot rule out disease involvement but
7 seems unlikely given normal tumor markers. Will need to be
8 re-assessed on subsequent imaging.

9 THE COURT: OK. So that says conceivable, unlikely.

10 MS. LEVINE: That's right.

11 THE COURT: But indeterminate.

12 MS. LEVINE: Correct. And then what follows is the
13 recommendation for chemo.

14 THE COURT: OK. I understand that.

15 MS. LEVINE: Yes.

16 And, of course, there is a short-term plan of action
17 which I just described to your Honor. But, in terms of
18 long-term management, these are scans he is supposed to have
19 every three months. I understand from his family at that
20 yesterday's meeting with the urologist that if he were at
21 liberty, they would expect him to come in every four months for
22 at least the first year to get the same CT scans to make sure
23 that nothing has changed. And your Honor certainly doesn't
24 need me to tell you that the chances of that level of vigilance
25 and maintenance are unavailable in the BOP. I think having

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1 someone taken from an institution to get a scan is one of the
2 absolute hardest things I have ever tried to effect for a
3 client.

4 THE COURT: I believe that at Butner and one or two
5 other places they can do it in the institution.

6 MS. LEVINE: So I think if he were designated to a
7 medical center, that's correct, and I think otherwise we saw
8 this in the middle of COVID, that all the specialists, the
9 people who come in and do extra things, it was just paused
10 indefinitely.

11 THE COURT: Yes, but --

12 MS. LEVINE: But hopefully they're back up and
13 running. I don't know that information for sure but I guess
14 this is how I would say it: If he is out in the community, we
15 know with 100 percent certainty that he will get follow-up
16 medical care, and in the BOP that becomes a lot grayer. And,
17 of course, medical treatment is one of the 3553(a) factors that
18 the Court is allowed to consider. And, in fact, I think people
19 with ongoing medical crises that is often a particular reason
20 for variance, that is a reason that is often used by Judges in
21 this district.

22 And I promise I will sit down soon, I just have a
23 couple more small things.

24 The first is the statute that Jeremy pled guilty to is
25 a rarely used one in this district. I only know -- I was only

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1 able to locate one other case where someone pled to this
2 specific statute and that is a case we cited in our papers,
3 U.S. V Thompson where that defendant was given a
4 non-incarceratory sentence and supervision. We also cited to a
5 number of cryptocurrency fraud cases where people who did kind
6 of similar conduct were cases that were brought by the CFTC in
7 a civil context and not even -- there were no criminal charges
8 whatsoever and therefore there were no criminal penalties.

9 And then I think I also have to briefly comment on the
10 two cases that the government included in their sentencing
11 letter where they cited to two cases where there were really
12 substantial sentences for first-time offenders, it was in the
13 range of 40-some-odd months. But Jeremy couldn't be more
14 different than those defendants and I think the dissimilarities
15 are clear. The first is they were far older and far more
16 sophisticated than Jeremy. The defendant in *Wells* was 42. The
17 defendant in *Schwartz* was 73. The schemes went on for much
18 longer. In *Wells*, the fraud took place over six years. And in
19 *Schwartz*, I have to draw this distinction for your Honor: That
20 defendant pled guilty here in federal court, in 500 Pearl to
21 federal fraud charges, and then he kept committing fraud. The
22 government postponed the sentencing so that the sentencing
23 Court could address his ongoing illegal acts. He didn't learn
24 his lesson, he wasn't deterred, he clearly didn't actually
25 accept responsibility. And Ms. Magdo, in that case, advocated

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1 for a substantial jail sentence. And I just think this case
2 stands in stark contrast to someone like that. Your Honor
3 knows cases like that. You have seen fraud cases like that.
4 You have seen fraud defendants like that. And there is no
5 reason to think -- your Honor is right that I can't prove he is
6 not going to ever do anything bad ever again but there is
7 absolutely no indication that he will. All of the things we
8 look at --

9 THE COURT: I think you have covered that.

10 MS. LEVINE: Thank you.

11 And then the last thing I would say is the Court has
12 15 months of pretrial compliance to look at. It is that kind
13 of compliance of acting with your, like, showing the Court what
14 you can do, right? Not telling, not promising, but actually
15 showing the Court. And as I mentioned briefly earlier, I do
16 think there are a number of narrowly-tailored conditions that
17 the probation office has at its disposal for financial crimes.
18 One being approving lines of credit, a search condition
19 regarding his financial condition, a work condition, a
20 restitution condition, of course.

21 And, look. Jeremy has a ton of rebuilding to do. He
22 has a long road ahead of him and he has taken the first steps
23 on that road by pleading guilty, by expressing remorse. In his
24 letter to the Court he talked about the relief he felt when the
25 agents came and put him in handcuffs because the rubber was

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1 finally meeting the road and he has lived with that for more
2 than a year.

3 And so, your Honor, we submit that all of these
4 factors together, under 3553(a), do balance in favor of a
5 non-incarceratory sentence, with home detention, with community
6 service, while he lives at home with his parents, while he
7 slowly re-builds, while he finishes college, and gets medical
8 help for the cancer that he is already battling.

9 THE COURT: Thank you.

10 Mr. Spence, you have a right to speak before you are
11 sentenced. Is there anything you would like to say? If there
12 is, you can go over to the lectern where Ms. Levine was.

13 THE DEFENDANT: Your Honor, a few years ago I entered
14 a world that I was completely unprepared for. I made many
15 mistakes and I am sincerely mortified by my actions. I am
16 deeply, deeply sorry to my family and the victims that were
17 hurt because of me and I assure you that nothing like this will
18 ever happen again. I am very sorry.

19 THE COURT: Thank you.

20 Ms. Magdo?

21 MS. MAGDO: Thank you, your Honor.

22 THE COURT: You may proceed when you are ready.

23 MS. MAGDO: Thank you.

24 Your Honor, I would like to begin by briefly
25 addressing a few points that Ms. Levine made in her address to

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1 the Court that I think are -- they're a little bit of a red
2 herring.

3 So the fact that Mr. Spence plead to the top count,
4 which was commodities fraud, is really of no moment. The
5 second count in the indictment was wire fraud. Commodities
6 fraud is essentially a wire fraud that involves commodities and
7 we try to charge -- have someone plead to the charge that most
8 accurately reflects the conduct.

9 With respect to the defendant's age and his health,
10 those don't really put him outside the heartland of defendants.
11 Unfortunately, as the Court is aware, we see so many people in
12 their 20s appear before the Court in a range of cases.

13 With respect to his health the government, as we made
14 clear in our submission, we don't oppose a delayed surrender
15 date so that this can be taken care of but this is not expected
16 to be a long-term, ongoing issue, and so many inmates that BOP
17 has do have long-term issues that are dealt with. So,
18 respectfully, I would say that the health issue can be dealt
19 with and then a period of incarceration would be appropriate.

20 Not only is Mr. Spence not outside the range of a
21 typical defendant, he is actually better off than most people
22 who are in his seat. He had a loving and supportive family in
23 a middle-class home. He had teachers who cared about him. He
24 went to an elite private college. And although it's implied
25 that his major -- philosophy -- didn't prepare him for trading

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1 cryptocurrency, I believe that people who study philosophy also
2 study ethics and moral theory. And it was definitely something
3 that, along the way, with all the advantages he had, he should
4 have known better.

5 He was surrounded by -- or at least by two experienced
6 people who considered him a friend and who did everything they
7 could do try to help him. They went into a lot of detail on
8 that so I won't belabor that point, but these were not all
9 anonymous strangers to him. But, even if they were, that's not
10 an excuse to lie, to cheat, to steal. Moreover, this was not a
11 one-time slipup. It didn't last six years or 10 years, but
12 this fraud lasted over a substantial period of time where
13 Mr. Spence had many opportunities to come clean. And he chose
14 not to. He didn't start this off as a non-profit for the
15 benefit of the investors, he did this in order to also make
16 money for himself. And he didn't lead a particularly lavish
17 lifestyle, it is true, but that's because he was losing money
18 from the get-go. He was just trying to plug the holes. He was
19 soliciting investments at a point where he had already lost
20 nearly all of the investor money and so that was because he
21 could pay back the earlier investors. Those earlier investors
22 were clamoring for their money back and he did not want to be
23 discovered.

24 The things that Mr. Spence did in order to cover up
25 the crimes really belie the claim that he is not a

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1 sophisticated individual. He, throughout the scheme, provided
2 fake returns to the administrators so that they could pass them
3 on to the investors. Once the administrators got suspicious
4 he, on two occasions, had a video of himself apparently logging
5 into the account that contained the investor funds and he was
6 able to have it display a fake balance that didn't actually
7 exist. I am sure the FBI understands how he did that but I
8 still don't understand how he did that.

9 And another thing that defense counsel mentioned is
10 that the loss amount is too heavily emphasized in fraud cases
11 in the sentencing guidelines. While I agree that might be true
12 in certain cases where it is a victimless crime, it is a fraud
13 on the market, it is some sort of an abstract loss. Here, the
14 loss was not abstract. Every dollar that is in the loss amount
15 came out of the pocket of an individual who was a parent, or a
16 spouse. These were real hardships for real people. And I
17 think your Honor can see that from the 15 letters that were
18 submitted and the two individuals who came to speak here today.
19 I can also represent that there were other victims who wanted
20 to write to the Court but who did not want their identities
21 revealed because of the shame and the embarrassment and the
22 guilt that they felt having been victimized here. And that is
23 consistent with what is in the letters that were written by the
24 victims. They talk about both the enormous economic impact
25 that this crime had on them, they describe losing half, 80, 90,

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1 or a hundred percent of their life savings. One individual was
2 forced to sell his entire personal IRA 401K in order to just
3 pay his living expenses. And perhaps, more profoundly, the
4 victims repeatedly describe feelings of depression, anxiety,
5 stress. They continue to suffer nightmares years after this
6 happened. They themselves feel shame, humiliation, and they
7 describe losing the trust of the people around them and losing
8 confidence in themselves.

9 With respect to specific deterrence I am not alleging
10 in any way that the defendant has committed any misconduct
11 while he has been on supervised release, but the idea that
12 during the time that he is on probation and then thereafter,
13 when there is absolutely no supervision that the defendant
14 couldn't go back and commit another crime like this, maybe he
15 is not so inclined but whether practically he could do it, the
16 answer to that seems pretty straightforward.

17 There are countless such scams and most of the
18 perpetrators are never caught. This type of fraud will always
19 exist whether it's a boiler room -- and by this type of fraud I
20 mean an individual soliciting others, mostly unknown to him, to
21 give them money, perhaps with promises that should be perceived
22 as too good to be true, but everything from boiler rooms to
23 romance scams to the IRS impersonators. This type of fraud
24 will always be with us, it will just change form.

25 Defense counsel also mentioned that the defendant has

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1 suffered from the act of being arrested, the fact that he has
2 had to be under pretrial supervision and live with his parents,
3 that the media attention and the reputational harm that he
4 suffered since being arrested but I think it's clear that those
5 are not a defendant's punishment, those are effects and they
6 are negative but those themselves are not punishment.

7 And I think really that's what I would like to end
8 with, is that in this case, the need for both specific and
9 general deterrence but also the need for just punishment. A
10 non-custodial sentence would send an absolutely wrong message.
11 It would be less than a slap on the wrist, it would be more
12 like a gentle tap; it would be unfair and unjust to the over
13 100 victims who have lost not only financially but who have
14 suffered emotionally. And, your Honor, I respectfully submit
15 that a sentence with a substantial term of imprisonment is
16 warranted here.

17 Does the Court have any questions?

18 THE COURT: No. Thank you.

19 Mr. Spence, please rise for the imposition of
20 sentence.

21 Let me begin by making a couple of observations. I
22 was struck in reading Ms. Levine's memorandum by a few things.
23 I'm not going to mention all of them. She did a very good job.
24 One thing I was struck by was the stupidity of the people you
25 gulled into putting money with you. People invest in a

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1 squiggly line? Give me a break. People send money to somebody
2 identified on the Internet as Bruce Half troll, or maybe Bruce
3 Half troll was the fellow sending the money? To describe this
4 as the wild west does a substantial injustice to the wild west.
5 That, at least, was kind of civilized if you didn't get shot.

6 Now that is not to diminish the harm that these people
7 suffered at all. The victims in cases like this, they suffer
8 in real terms. They have not only the fraudster to blame for
9 it, in a lot of cases they have themselves to blame for it as
10 well but that doesn't mean it is any less serious.

11 The other thing that really stood out was this
12 sentence because it really spoke to me: Speaking of why you
13 launched into the provision of false information and hiding the
14 losses Ms. Levine wrote: "He believed that if people kept
15 investing, he could make everyone whole."

16 The number of times that I have sentenced defendants
17 of whom that could have been and was said in 27 and a half more
18 or less years here, is astonishing. It astonishes even me and
19 I was here for every one of them. You think Bernie Madoff
20 thought that? I do.

21 I think it is an occupational hazard of people on Wall
22 Street. People get started, they cut this corner, they cut
23 that corner -- not all of them, of course. Pretty soon there
24 is a problem. They start lying to cover the problem, start
25 gypping people out of other money to try to pay to cover the

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1 problem, and pretty soon the FBI is at the door. Over and over
2 and over again, through my whole career on the bench, through
3 my whole career as a lawyer, through everything I know about
4 the financial markets in this country and similar economies and
5 modern economic history, it is the never-ending story. But it
6 is criminal and, Mr. Spence, I accept that you are a smart kid,
7 and you were very well educated, and you had loving and moral
8 and ethical parents and you knew -- you knew to a certainty
9 when you started lying, when you started stealing from one to
10 pay the other -- that it was wrong. There was no doubt in your
11 mind.

12 You know, sometimes I see young defendants your age
13 and younger who come out of far less privileged circumstances
14 and who have been implicated in crimes where there was real
15 wrong done but where, in some twisted way, you could get your
16 mind around the concept that maybe they just thought that's the
17 way you lived in their community. I can't say that about you.
18 This was a serious crime. You committed it deliberately. You
19 didn't do it once. You did it over and over again for months.
20 You had a million opportunities to say, "wait a minute, I'm out
21 of here, the time has come to go see my dad, get a lawyer, and
22 fess up." Never happened. You didn't do it until you were
23 caught.

24 Ms. Magdo struck, to my way of thinking, all the right
25 notes. I am asked to take into account the 3553 factors. Of

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1 course I do, but they don't all cut your way. I'm obliged to
2 impose a sentence that reflects the seriousness of the crime.
3 You took people out of significant parts of their life savings.
4 You made their lives and their emotional health far worse than
5 it should have been. What is the right answer to reflect a
6 just punishment for that and the seriousness of the crime? I
7 refer also to just punishment. I'm very sympathetic about your
8 medical condition. We will talk about that in a moment. It is
9 a terrible thing. I hope the prognosis is as good as I have
10 been led to believe it is. I genuinely do. But to have you
11 walk out of here after what you did? I don't see it.
12 Moreover, I have to consider imposing a sentence that others in
13 the financial community, either the real one -- I shouldn't say
14 the real one because I am behind the times -- even the one I
15 grew up with on Wall Street without this electronic never-never
16 land, that there are real life consequences to these kind of
17 shenanigans and they are serious and if they get caught,
18 they're going to pay a serious price. And that's independent
19 of whether I believe you are ever going to do anything like
20 this again. Whether you will, I really don't know. There are
21 some times when I come to sentence a defendant where it is
22 reasonably clear to me that the chances of recurring wrongdoing
23 are minimal. I'm told that's true in your case. I understand
24 you behaved yourself, as far as anybody knows, on pretrial
25 release. But I don't really know that and I don't know whether

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1 that's because there is real remorse and you have learned your
2 lesson, or whether it is because you understand that getting
3 caught engaging in shenanigans during this period is about the
4 worst thing you could possibly do. But that once the sword of
5 Damocles is no longer hanging over your neck, maybe there is a
6 relapse. I just don't know. I am undecided in my mind about
7 that, I don't have enough information.

8 The one thing that I am inclined to agree with in
9 terms of a factor arguing for a lower than guideline sentence,
10 is that I, too, am critical about the focus on the loss amount
11 in the table that appears in the guidelines and plays what is
12 often a disproportionate amount, a disproportionate role in
13 determining a sentence in an economic crime like this. I have
14 commented about that previously in sentencing. I understand it
15 has no real empirical basis, it is just what some committee
16 negotiated and so I don't attach too much weight to it.

17 So, in the last analysis I am going to impose a
18 sentence somewhat the below the sentencing guidelines but I do
19 it principally on the basis of my concerns about the
20 importance, in the guideline computation, of the loss amount,
21 and I am trying to achieve the objectives of the Sentencing
22 Reform Act to which I adverted.

23 It is the judgment of this Court that you be committed
24 to the custody of the Attorney General of the United States, or
25 his designee, for a term of imprisonment of 42 months; that you

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1 thereafter serve a term of supervised release of three years;
2 and that you pay the mandatory special assessment of \$100.

3 It is further adjudged that you pay restitution in the
4 amount of \$2,847,743 as is more fully set forth and on the
5 terms more fully set forth in the consent order of restitution
6 that I am signing here this afternoon.

7 The term of supervised release will be subject to the
8 mandatory, the standard, and the special conditions of
9 supervision set forth at page 21 through 23 of the presentence
10 report which you have testified you have read completely.

11 Does either counsel feel it necessary for me to read
12 those conditions *in haec verba*?

13 MS. MAGDO: Not from the government, your Honor.

14 MS. LEVINE: No, your Honor.

15 THE COURT: All right.

16 Now, I advise you that to whatever extent you haven't
17 waived it, you have the right to appeal from the judgment
18 imposing this sentence. If you wish to appeal, you must file a
19 written notice of appeal not later than 14 days after the date
20 on which judgment is entered, which would probably be tomorrow.
21 If you wish to appeal and you can't afford to pay the fees
22 necessary to do so, you have the right to move for permission
23 to appeal as a poor person. If you make such a motion and it
24 were granted, you would be permitted to appeal without payment
25 of the fees, and if you couldn't afford a lawyer, a lawyer

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1 would be appointed for you at government expense.

2 You may be seated.

3 I do want to say to Mr. and Mrs. Spence, there is no
4 joy in doing this -- and to your sister -- there is no joy in
5 doing this. This is a duty that just, unfortunately, falls to
6 us. And I know it will be hard on the family and that happens,
7 regrettably, almost every time somebody commits a serious crime
8 and winds up being sentenced for it. It is the fault of the
9 offender and not anybody else.

10 Now, I am receptive to delaying the surrender because
11 I want Mr. Spence to have the medical condition properly tended
12 to and I do not have excessive confidence in the medical care
13 in the Bureau of Prisons through a great deal of experience
14 over the years with people over whom I have had jurisdiction.

15 I am inclined to set a surrender date in the middle to
16 latter part of September to err on the side of too much
17 opportunity for treatment rather than too little. So absent
18 objection, I will continue the defendant on bail on the
19 condition that he surrender to the Bureau of Prisons for the
20 service of his sentence at the institution designated by it for
21 that purpose on the date and by the time specified by the
22 Bureau of Prisons which shall not be earlier than September
23 19th. Compliance with that requirement is required because I
24 am ordering you to comply with it and because I am making it a
25 further condition of your bail. If, for any reason, you don't

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1 comply, you could be prosecuted for contempt of Court and for
2 escape, both of which could be serious additional matters
3 leading, perhaps, to additional penalties.

4 Now, I am going to require that by September 12th,
5 unless the defendant has been designated to surrender on or
6 after the 19th and the defendant intends to do so without an
7 extension, the following: I would consider, on medical
8 grounds, a possible postponement of the surrender date if the
9 defense thinks it is medically necessary or appropriate. But
10 I'm not an easy person on this and what I would want to have by
11 September 12th, if the defendant is going to make such a
12 request, is complete information on the status of the cancer
13 including staging, the radiological reports, the pathology
14 reports, and the proposed treatment plan. I'm not an
15 uninformed consumer of such things, regrettably not for any
16 personal reason. And if I have questions, of course, you will
17 hear about them.

18 Anything else?

19 MS. MAGDO: Your Honor, the government moves to
20 dismiss the open count in the indictment.

21 THE COURT: Granted.

22 MS. LEVINE: Your Honor, may I have one moment with my
23 client?

24 THE COURT: Yes. Sure.

25 (Defendant and counsel conferring)

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1 MS. LEVINE: Thank you.

2 Your Honor, just briefly. First is we would ask that
3 the Court, just with regard to designation, we would ask for a
4 recommendation that Mr. Spence serve his prison term as close
5 to Rhode Island, which is his address, to facilitate family
6 visits.

7 THE COURT: Look. I will consider that in September
8 and the reason I am putting it off is if the circumstances
9 warrant, I would recommend a medical facility, and that might
10 be inconsistent. Now, I suspect it isn't because I think FMC
11 Devens is right there, it is right close to Rhode Island, but
12 I'm not sure whether that would be the best place for him if
13 there is really a medical situation. So if you want to renew
14 that request in September, do so.

15 MS. LEVINE: Right. That's exactly what --

16 MR. KELLY: May we confer briefly?

17 THE COURT: Yes.

18 (Counsel conferring)

19 MS. LEVINE: So your Honor, we are having an internal
20 conversation about exactly what your Honor just addressed,
21 which is I think it is premature for us to know if we would be
22 requesting a medical center because it is going to depend a lot
23 on how things progress.

24 THE COURT: Sure.

25 MS. LEVINE: And I -- my colleague suggests that we

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1 ask the Court that today's judgment, the current judgment say
2 designated near Rhode Island, and in the event that he need no
3 further medical care when he reaches the BOP, the judgment
4 would lie as is. And in the event that the future developments
5 with regard to his medical care --

6 THE COURT: We can amend the judgment.

7 MS. LEVINE: -- we can amend the judgment at that
8 point.

9 THE COURT: That's OK.

10 MS. LEVINE: Thank you. Nothing further, your Honor.

11 THE COURT: Anything further?

12 MS. MAGDO: No. Thank you, your Honor.

13 THE COURT: Thank you, all.

14 o0o